

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO. 72 of 2003

DISTRICT MUMBAI

Shri Shivraj Chandrakant Sawant
 aged 32 years, Occ. service,
 Indian Inhabitant of Bombay
 residing at 1/6, Om Adinath Niwas,
 near Income Tax Colony, Meghwadi,
 Jogeshwari (East), Mumbai 400 060

.. Appellant
 (Orig.Petitioner)

V/s

Smt.Sheetal Shivraj Sawant
 aged 30 years, Occ. house wife
 Indian Inhabitant of Bombay
 residing at C/o Bhalchandra Rane,
 Room No.3, Ashiq Ali Chawl No.4
 Near Sham Nagar, Jogeshwari (E)
 near Rear Gate of Balvikas School,
 Bombay 400 060

...Respondent
 (Orig.Respondent)

Shri Rajiv Patil for the Appellant
 Shri Rakesh D. Dave for Respondent

CORAM: S.B.MHASE AND
 S.R.SATHE, JJ.

DATED: 25th Sept. 2006

ORAL JUDGMENT : (PER S.R.SATHE, J.)

1. Appellant-husband, the original petitioner in Marriage Petition No.765 of 1994 has preferred this appeal against the judgment and order passed by the Judge, Family Court, Mumbai whereby the Petitioner's petition for divorce filed on the ground of cruelty was dismissed. For the sake of convenience hereafter the parties shall be referred to as the Petitioner and Respondent.

. Brief facts giving rise to this petition are as under:

2. The marriage between the Petitioner and Respondent took place as per Hindu Vedic Rites on 8-12-1992. After marriage Respondent started residing with Petitioner in his house i.e. 1/6 Om Adinath Niwas, Jogeshwari. Petitioner's aged mother and younger brother aged about 20 years were also residing at the said place. It is petitioner's case that though he and his family members were treating the Respondent with respect and dignity she was not behaving properly. She often used to pick up quarrels with Petitioner's mother and used to insult and humiliate the Petitioner in presence of his mother and brother. She often used to leave the matrimonial home without informing anybody in the house and go to stay at her brother's place for weeks' together.

3. In February 1993, Respondent told the Petitioner about her pregnancy. Naturally, the Petitioner and his mother were happy. However, some days thereafter the Respondent's sister Mrs. Talekar and her husband came to the petitioner's house and there were some secret talks between Respondent and them. Thereafter Respondent started insisting that unless Petitioner drives his mother and brother out of the house she would not give birth to a child and on the contrary would get herself aborted. The Petitioner refused to accede to Respondent's say and on that count there was a dispute. On 15-2-1993 Respondent picked up quarrel and used abusive language against the

Petitioner and his mother and she herself poured kerosene on her person and gave threat that she would commit suicide. It is petitioner's case that he and his mother and brother prevented the Respondent from doing such act. Petitioner thereafter called Respondent's brother and he took her to his house.

4. After few days Respondent returned to matrimonial home. However, according to the Petitioner even thereafter there was no improvement in the conduct of the Respondent and in May 1993, she went to her brother's place without informing the Petitioner. According to the Petitioner on 9-5-1993, the Respondent and her brother came to his house and at that time Respondent told the Petitioner that he should make some arrangement for separate residence within 3 days otherwise she would get herself aborted. It is petitioner's case that this caused him great mental agonies. Again on 11-5-1993 Respondent told the Petitioner about the same thing and started using filthy language, as a result of the same Petitioner suffered nervous break down and became unconscious. Even in such condition the Respondent left the house.

5. According to the Petitioner a fortnight thereafter he went to Respondent's brother's place to persuade the Respondent to return to her matrimonial home. However, the Respondent was firm on her say about separate residence and did not return to matrimonial home. It is his case that on 20-7-1993 he sent letter to the

Respondent and called upon her to come to matrimonial home. On receipt of the said letter the Respondent filed a criminal complaint under Section 498A of IPC against the Petitioner wherein she alleged that Petitioner and his mother were demanding dowry of Rs.30,000/- from her and for non payment of the said dowry they treated her with cruelty. It is Petitioner's case that when such complaint was received by the Police they called him and brutally beat him, as a result of the said complaint he was defamed and his reputation was tarnished. It is petitioner's case that at that time Police forcibly obtained his signature on some paper but they did not take any action on the complaint of the Respondent. But on the contrary closed the same.

6. It is Petitioner's case that thereafter Respondent returned to matrimonial home and gave birth to a male child on 13-9-1993. Thereafter, Petitioner even went to Respondent's brother place for naming ceremony but according to him even at that time he was humiliated. Respondent then sent a letter dated 9-1-1994 and made false allegations against the Petitioner regarding ill-treatment. The Petitioner gave reply to the same on 24-1-1994 and then issued notice through Advocate to the Respondent on 10-3-1994 and also asked her as to whether she was willing to file joint petition for divorce. The Respondent did not give any reply to the said notice. Hence the petitioner filed the Marriage Petition for divorce on the ground of cruelty.

7. The Respondent filed her written statement and admitted that she is legally wedded wife of the Petitioner and out of the said wedlock they have a child by name Ameya. She contended that the Petitioner is in fact a quarrelsome person. His father and other brother are also not residing with him and they had even not attended the marriage of the Petitioner. She denied that she used to go to her brother's house without informing the Petitioner or his mother or that she was insulting and humiliating the petitioner. According to her the Petitioner and his mother on the contrary used to say that she (Respondent) is a wicked woman. She also denied the alleged incident dated 15-2-1993. She categorically denied that she had ever asked the Petitioner to make arrangement for separate residence. According to her the Petitioner and his mother often used to say that she should bring amount of Rs.30,000/- from her brother and Petitioner used to assault her and often used to give threat that they would kill her.

8. Respondent admitted that she had been to her matrimonial house along with her brother on 9-5-1993 but she denied that on that day she gave any ultimatum to the Petitioner that he should make arrangement for separate residence within 3 days. It is her case that on 10-5-1993 the Petitioner and his mother in fact confined her did not give food to eat and told that the Petitioner would give divorce to her. She also denied the alleged incident

dated 11-5-1993 and on the contrary contended that the Petitioner and his mother were ill-treating her and it was their intention to compel her to give divorce and as a result of the same she filed complaint against them on 3-7-1993 under Section 498A of IPC at Jogeshwari Police Station.

9. She admitted to have received the notice from the petitioner but contended that as she was all along kind to the Petitioner but he and his mother had harassed her and ill-treated her and as such there was no question of seeking divorce by mutual consent. The Respondent therefore contended that petition filed by her husband is false and the same be dismissed.

10. On these pleadings the learned Judge, Family Court, Bandra framed issues at Exh.16. In order to prove his case the Petitioner husband examined himself at Exh.19 and another witness by name Sadanand Vishwasrao, his neighbour Exh.21. As against this the Respondent examined herself at Exh.22 and witness Chandrakant Sawant, father of the Petitioner Exh.38 and one witness Suvarna Ghadi, neighbour, Exh.39. She also produced certain documents. After considering the evidence of both the parties the learned Judge, Family Court came to the conclusion that the Petitioner husband has failed to prove that conduct of the Respondent wife caused mental cruelty to him. Naturally, he dismissed the petition for divorce.

11. Being aggrieved by the said judgment and order husband filed Appeal in the High Court being F.C.A.No.65 of 1998. During the pendency of the said appeal, the Criminal Case NO.297/P/94 which was filed against the Petitioner and his mother and brother for the offence punishable under Section 498A read with 34 of IPC was tried by the 44th Court of Metropolitan Magistrate and as the evidence was not sufficient to prove the offence beyond reasonable doubt the Petitioner and his mother and brother were acquitted.

12. On 14-6-2002 when the above mentioned Family Court Appeal was heard by this Court (Coram:H.L.Gokhale and J.P.Devdhar,JJ) it was argued on behalf of the Petitioner husband that the Petitioner husband has been acquitted in criminal case filed by the wife. It was also submitted that as a result of the said false complaint the Petitioner husband was required to suffer grave mental torture. He also lost his chance of promotion and his younger brother also could not attend his office as he was required to attend the Police Station. It was therefore argued that conduct of the wife filing false criminal complaint against appellant husband amounts to cruelty and he is entitled to get divorce on that ground. The Division Bench of this Court felt that this subsequent event of acquittal of the Petitioner in the criminal case filed by the wife is a relevant factor which will have to be considered while deciding the petition in which he had already mentioned that wife filed a false case and caused

mental cruelty. As a result of the same, the Division Bench remanded the matter to the Family Court and also ordered that the petitioner may amend his pleadings and the Respondent wife will be at liberty to file additional written statement.

13. As a result of the above mentioned order the Petitioner husband amended the petition and made necessary averments as mentioned above with regard to filing of false complaint and Respondent wife also denied the said allegations and contended that case filed by her was not at all false. The trial Court has acquitted the Petitioner holding that there was no sufficient evidence to prove the offence beyond reasonable doubt so that by itself is not be held that the wife caused mental cruelty.

14. From perusal of the record it is very clear that even after the remand of the matter both the parties examined themselves. The Petitioner also produced the judgment passed by Metropolitan Magistrate in Criminal case.

15. After considering the said evidence the learned Judge, Family Court, Mumbai again came to the conclusion that the Petitioner husband was acquitted because the prosecution could not adduce sufficient evidence to prove the guilt beyond reasonable doubt. The trial court had never observed that there was no prima facie case against the Petitioner and even charge was also framed but at the time of trial the independent witness did not support and

ultimately the prosecution failed. It was, therefore, observed that it cannot be said that the Respondent had filed false complaint and caused mental cruelty to the Petitioner. Naturally, the learned Judge of the Family Court dismissed the appeal.

16. Being aggrieved by the above mentioned order the Petitioner husband has filed the present Family Court appeal.

17. In this appeal before us Shri Rajiv Patil, learned Advocate for the Petitioner husband has urged two points. Firstly, he submitted that the learned trial Judge has not properly appreciated the evidence on record and has wrongly held that the Petitioner has failed to adduce sufficient evidence to show that conduct of the Respondent wife was amounting to cruelty. Secondly, he canvassed before us that mere filing of a complaint, at that stage was not treated as an act of cruelty but after full trial of the case the Petitioner husband has been acquitted for want of evidence. The husband has suffered great mental torture due to filing of the said complaint. He has even lost his chances of promotion and his service record is spoiled. So, considering this aspect it must be said that conduct of wife filing false criminal complaint against the husband has resulted in causing cruelty as contemplated under Section 13(1)(ia) of Hindu Marriage Act. He therefore, submitted that appeal be allowed and decree for divorce be passed in favour of the Appellant

husband. As against this, the learned Advocate for the Respondent supported the judgment and order passed by the learned trial Judge.

18. It is not in dispute that marriage between the petitioner and Respondent took place as on 8-12-1992 and after marriage the Respondent started residing in Appellant's house i.e. in Om Adinath Niwas, Jogeshwari and Appellant's mother and younger brother were also residing there at that time. It is also clear that out of the said wedlock they have a son by name Ameya. Admittedly, the Appellant is a Police Constable. It is needless to say that while appreciating the entire evidence on record one has to take into consideration this point.

19. The Appellant husband has claimed divorce only on the ground of cruelty. As led down in various authoritative pronouncement including V. Bhagat V/s Mrs. D.Bhagat (1994) 1 SCC 337 cruelty for the purposes of Section 13(1)(ia) is to be taken as behaviour by one spouse towards the other, which causes reasonable apprehension in the mind of the later that it is not safe for him or her to continue the matrimonial relationship with other. Mental cruelty is a state of mind and feeling of one of the spouses due to behaviour or behavioural pattern by the other. Mental cruelty is a matter of inference to be drawn from the facts and circumstances of the case. Bearing in mind this position of law let us scan the

evidence on record and find out whether the Appellant has proved the alleged conduct on the part of the Respondent wife and whether the same amounts to mental cruelty as contemplated under Section 13(1)(ia) of Hindu Marriage Act.

20. At the outset it must be mentioned that though in the petition the husband has alleged several acts of the Respondent, most of them are very vague. Besides this, there is no other evidence to support the said allegations. It is true that for such type of acts where the alleged incidents have taken place inside the four walls of the house one cannot expect to have independent evidence but still then if we take into consideration the allegations made by the Appellant husband then we do find that for certain incidents there could have been other evidence to corroborate the version of the Appellant husband. But such evidence is not produced by the Appellant.

21. The main grievance of the Petitioner against the Respondent wife is that she was insisting that the Petitioner should make arrangement for separate residence as she had no desire to live along with her mother in law and brother in law. It is true that in many cases the newly married woman is rather reluctant to reside along with her mother in law and on that count sometimes there are minor disputes but that does not mean that their

reluctance to reside in the joint family by itself amounts to cruelty as contemplated under Section 13(1)(ia) of Hindu Marriage Act. If such ground is taken in the petition then it is absolutely essential for the Petitioner husband to adduce very cogent and convincing evidence showing as to how the wife was insisting for separate residence and on that count how she was behaving. If such evidence is lacking then merely making very vague statement that the wife was insisting for separate residence by itself is not sufficient. In the instant case the Petitioner has not examined even his mother and brother to prove the alleged adamant and improper behaviour of the Respondent. It is pertinent to note that in order to prove the incident dated 11-5-1993 Petitioner has examined one witness by name Sadanand Vishwasrao Exh.21, however, his evidence only shows that when he came to know that the Petitioner has become unconscious he went to his place and called the doctor and when doctor was examining the petitioner his wife i.e. Respondent was all along talking and at that time only she left the house. Petitioner husband has stated that on that day wife told him that he should make separate arrangement for residence and for that count there was quarrel and she abused him and as a result of the same he suffered nervous break down and became unconscious. Now besides the bear interested word of the Petitioner there is nothing to show that on that day the Respondent had in fact used any filthy language or abused the Petitioner or insisted for separate residence and as a result of that the Petitioner had

attack of nervous break down and he become unconscious.

22. It is needless to say that evidence of witness Sadanand Wishwasrao is also of no use to Petitioner because his evidence is vague. It is pertinent to note that he has not even stated as to what Respondent was talking, he has not said that she was abusing or accusing the Petitioner all that he has said is that she left the house. It is pertinent to note that though the said witness claims to be the neighbour and knowing things about Petitioner he has stated that he has no knowledge as to whether petitioner's father is residing with Petitioner or not. He never enquired about the same with the that he never asked the Petitioner as to what is the reason of quarrel between him and Respondent. If really, any such incident as alleged by the Petitioner had occurred then certainly Petitioner would have told about the same to this witness, who was so close to him, but that has not happened.

23. The Petitioner has stated that Respondent had told him that so long as the Petitioner would not make arrangement for separate residence she would not give birth to a child and would get herself aborted This according to him happened few days prior to 9-5-1993. Firstly, besides his bare word there is no other evidence to support his version. Besides, it is very difficult to believe that for such thing any woman who is pregnant for the first time would say that she would get herself

aborted if no arrangement for separate residence is made. What is more to be noted is if we assume for the sake of argument that Respondent was firm on said stand then she could have done so because admittedly for several days she was residing at her maiden home. But we find that she never made any such attempt. So, merely because the Petitioner husband has said that such threat was given to him we cannot jump to the conclusion that Respondent wife was insisting for separate residence or that on that count she had even made an attempt to commit suicide. On the contrary, entire evidence on record goes to show that Respondent was being harassed by the Petitioner and his mother for dowry and they were asking to bring amount of Rs.30,000/-.

24 It must be noted that though in the petition the Petitioner husband has made several allegations against the Respondent's behaviour, surprisingly in his first letter dated 20-6-1993 (Exh.24) he has not made out any such serious grievance about the conduct of the Respondent wife. If really the Respondent wife had given threat of committing suicide or if such incident regarding getting herself burnt and that too with an intention to pressurise the Appellant husband had occurred then certainly he would not have failed to mention about the same in his letter dated 20-6-1993. If we peruse the said letter we find that Appellant husband has not made any grudge about the conduct of the Respondent wife. On the contrary he has mentioned in the said letter :

"I believe that you are prudent enough to understand that petty altercations, if any between you or mother in law should have no effect on our married life"

25. From the above mentioned statement of the Appellant husband it is very clear that even according to him the conduct of the Respondent wife was not at all of any serious and grave nature and had not caused any mental torture to him. So, this letter itself goes to show that the allegations made by the Appellant husband in petition are not true and correct. It must be noted that this letter is in fact written by him only after the time his wife made grievance about the cruelty meted to her at the hands of Appellant husband. So, above mentioned letter is sufficient to negative the case of the Appellant husband that conduct of the Respondent wife caused cruelty to him.

26. Respondent has stated that the Petitioner and his mother were insisting that she should bring sum of Rs.30,000/- and used to say that unless that amount was paid they would not allow her to stay with them. In order to corroborate this version, the Respondent has examined one witness Suvarna Ghadi, Exh.39. She has stated that on 5-5-1994 at about 7-30 a.m. she heard the voice from the house of the Petitioner and at that time when she went she found that Respondent was standing out of her house with child and Petitioner was demanding amount. Merely because

the said house is not visible from the house of the said witness one cannot jump to the conclusion that she is a got up witness. After hearing the voice the said witness has noticed the above incident. So, it obviously means that on hearing the voice she had gone near the said place. It is pertinent to note that said witnesses has stated that even at that time she did not actually intervene the said quarrel as the petitioner's family members are not having good relations with persons residing in the said lane. If we see the Exh.58 i.e. complaint filed by the Petitioner's mother against Respondent on 5-5-1994, she has not at all mentioned that on that day her son had become unconscious as a result of nervous break down occurred due to behaviour of the Respondent nor she has said anything about the arrival of witness Sadanand Vishwasrao. So, under such circumstances we are not inclined to accept the case of the Petitioner in this behalf.

27. It is an admitted fact that though Respondent had filed complaint with Police on 5-5-1994 regarding harassment caused to her by Appellant, his mother and brother the Police did not take immediate action. As a result of the same time and again she made grievance about the same and also issued reminder letter to the Deputy Commissioner of police and ultimately on 14-7-994 on the basis of the complaint that was filed by the Respondent regarding the incident dated 5-5-1994 offence under Section 498A read with 34 was registered at

C.R.No.94/1994. In that C.R. the Respondent was arrested and ultimately criminal case no.297/94 was tried against him and he was acquitted. The learned Advocate for the Appellant husband strenuously argued before us that relying on the judgment of the Metropolitan Magistrate acquitting the accused it be held that complaint filed by the Respondent against the appellant husband was false and the false lodging of the complaint has caused grave mental agony to the Appellant husband and as such he is entitled for divorce. It is true that if a wife files a false complaint alleging that she was ill-treated and harassed by he husband and/or in laws and on the basis of the same husband and in laws are arrested and required to face the trial then such conduct of the wife can be termed as cruelty. However, at the same time it must be noted that merely because a complaint making allegations of the harassment are made against the husband and ultimately he is required to undergo the trial, that by itself is not sufficient to jump to the conclusion that filing of a complaint itself amounts to cruelty. Similarly, it is needless to say that merely because in a given case, the husband is acquitted in the criminal case instituted on the basis of complaint filed by the wife, one cannot jump to the conclusion that the wife's conduct was amounting to cruelty. It is only when the husband establishes that complaint that was filed by the wife against him was baseless and false and even the wife was also knowing the same, the husband would be entitled to seek divorce regarding such conduct of the wife which can be termed as

cruelty under Section 13(1)(ia) of the Hindu Marriage Act.

28. Shri Patil, learned Advocate for the Appellant husband has drawn our attention to a case Pravin Mehta V/s Inderjit Mehta **(2002) 5 SCC 706** wherein on facts the apex Court observed:

"The cumulative effect of the facts proved by respondent husband such as frailty and apparent ill health of appellant wife, her refusal to undergo medical tests and treatment, or to disclose nature of illness for which she was being treated since before marriage, her inability or lack of cooperation in establishing normal cohabitation and repeatedly causing social embracement to respondent husband, taking false plea that she had suffered miscarriage and making false complaint to the police, held, would be to cause such mental depression, anguish, disappointment and frustration as to amount to

29. We have carefully gone through the facts of the above mentioned reported case. It is evident that in that case apart from filing of the complaint to police, the wife's conduct was held to be sufficient to cause mental torture and agony to the husband. Besides that in that case it was specifically observed that wife was making false allegations. So, under such peculiar circumstances it was

held that the conduct of the wife was amounting to cruelty. In the instant case, we have to find out whether the Appellant husband has brought sufficient evidence on record to show that case filed by the wife was false or baseless.

30. While considering the above posed question it must be noted that incidents in respect of which the Appellant husband was prosecuted had taken place on 5-5-1994 and prior to that. It must be noted that admittedly on 5-5-1994 the mother of the Appellant husband has also filed one NC complaint against the Respondent. From the said complaint it is very clear that even according to her on that day some incident occurred at the residence of the Appellant husband. So, this itself shows that the grievance made by the Respondent in her complaint dated 5-5-1994 cannot said to be false one. On the contrary as mentioned earlier the same is also corroborated by one independent witness Suvarna Ghadi (Exh.39). It is pertinent to note that Appellant husband is a police constable, so it is very difficult to believe that the police would brutally beat the Appellant merely because his wife had filed such complaint. If really such thing would have happened, the Appellant husband would not have kept mum but on the contrary would have made complaint against the Police persons who assaulted him. But that has not happened. On the contrary, it appears that appellant being a Police Constable, Police were rather reluctant in taking any action. In fact they did not take

any prompt action and it is only when respondent wife made repeated applications to the superior officers ultimately case was registered against the Appellant husband.

31. It is needless to say that acquittal of the accused in a criminal case may be due to several reasons. In the instant case, the learned Metropolitan Magistrate unnecessarily gave importance to the fact that the complainant wife did not adduce any medical evidence to show that she was assaulted. However, when we find that the police were in fact reluctant in taking any prompt action, it was difficult to have any medical evidence. Besides this, one independent witness who was examined by the prosecution, unfortunately did not support the prosecution. So, considering all those aspects, the learned Metropolitan Magistrate acquitted the appellant husband. However, it is nowhere specifically mentioned by the learned Metropolitan Magistrate that case filed by the Respondent wife was false or concocted. It must be noted that as there was sufficient prima facie material the Court had framed charge against the appellant husband and his mother instead of discharging them. So, merely because the accused is finally acquitted in the said case we are not inclined to hold that the appellant husband has proved that the Respondent wife had filed a false case. There is lot of difference between a "false case" and case "not proved". Merely not able to prove cannot be in all cases categorised as false. Considering the preponderance of probabilities and material on record we find that wife

was justified in filing complaint against the appellate husband.

32. Incidentally, it must be noted here that the Appellant husband had averred in the petition that Respondent wife filed a police complaint against him and as a result of the same he was required to undergo mental tension. It is needless to say that when any police complaint is filed against any person, he is bound to have mental agony. If it is established that the said complaint was false and baseless then only the complainant can be held responsible for the mental agony caused to accused, not otherwise. Prior to remand the appellant had failed to adduce sufficient evidence to prove that case filed by the wife was false. By remand of the matter appellant in fact got second opportunity to prove that case filed by the wife was false but even at that time he did not adduce any independent evidence to establish that case filed by the wife was false. So, merely because the appellant husband is acquitted as the prosecution failed to establish the guilt of the appellant beyond reasonable doubt it cannot be said that the conduct of the respondent wife namely filing complaint against husband was an act of cruelty as contemplated under Section 13(1)(ia) of Hindu Marriage Act, 1955.

33. In view of above, we are of the opinion that the learned Judge, Family Court, Mumbai has rightly appreciated the evidence on record and has correctly

dismissed the husband's petition for divorce. There is no necessity to interfere with the said judgment.

34. The appeal is dismissed with no order as to cost.

(S.R.SATHE, J.)

(S.B.MHASE, J.)

P.C.:-

. The appeal is dismissed with no order as to cost.

(S.R.SATHE, J.)

(S.B.MHASE, J.)